IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1182

THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, *Petitioner,*

v.

ROBERT FRANCIS, *et al., Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The Chamber of Commerce of the United States of America ("the Chamber") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (Jt. App. pp. 100a-104a) [1] is not yet officially reported. The order of the federal District Court (Jt. App. pp. 79a-85a) is reported at 379 F. Supp. 78.

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[1] "Jt. App." refers to the Joint Appendix filed by the Chamber and the State of Maryland.

JURISDICTION

The judgment of the Court of Appeals (Jt. App. pp. 105a-106a) was entered on September 22, 1975. On December 4, 1975, the Chief Justice extended the Chamber's time in which to file a petition for a writ of certiorari to and including February 19, 1976 (Jt. App. p. 105a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether striker eligibility for welfare benefits is contrary to and inconsistent with the purpose of the Social Security Act and contrary to national labor policy expressed in the National Labor Relations Act.

STATUTES AND RULES INVOLVED

The relevant provisions of the Social Security Act (42 U.S.C. § 601 *et seq.*), the National Labor Relations Act (29 U.S.C. § 141 *et seq.*), the Food Stamps Act (7 U.S.C. § 2011 *et seq.*) and the Railroad Employment Insurance Act (45 U.S.C. § 351 *et seq.*) are set forth in the separate Joint Appendix.

STATEMENT

A. The Strike

Robert Francis ceased work on July 1, 1971, when he joined a strike in support of his collective bargaining representative at the plant where he was working. Throughout the strike Francis was an employee of American Smelting and Refining Co.[2] On September

[2] This Company is a member of the Chamber, and it is its injury, caused by direct federal financial support under the AFDC-UF program for its striking employees, which permitted the Chamber to intervene in this proceeding.

10, 1971, the strike ended and Robert Francis returned to work. During the two and one-half month strike, Francis applied to the Maryland Employment Security Agency for unemployment benefits. The State of Maryland, pursuant to its unemployment eligibility regulations, denied Francis unemployment benefits because his unemployment was voluntary and resulted from his own decision to participate in a labor dispute in support of his collective bargaining representative. Mr. Francis then sought federal benefits under the Aid for Dependent Children—Unemployed Father program (AFDC-UF).

Francis was declared ineligible for these welfare payments on the ground that such benefits need not be paid to "meet need due to being disqualified for unemployment insurance". Thereafter, Francis, on behalf of himself and all other potential applicants similarly situated, filed an action in Federal District Court alleging that the denial of AFDC-UF benefits violated both the equal protection clause of the Constitution and Section 407 of the Social Security Act, 42 U.S.C. § 607, and the HEW regulations promulgated thereunder, 45 C.F.R. 223.100(a).

B. The Initial Proceedings

Pursuant to 28 U.S.C. § 2281, a three-judge court was constituted, and on January 28, 1972 issued its first decision in this proceeding (Jt. App. pp. 2a-34a). The three-judge court held that Maryland's eligibility regulations violated HEW guidelines (Jt. App. p. 24a), and issued a decision requiring Maryland to pay AFDC-UF benefits to all employees whose need arose solely out of a labor dispute (Jt. App. pp. 28a-29a).

Pursuant to 28 U.S.C. § 1253, the State of Maryland appealed the three-judge court's order to the Court.

On October 16, 1972, the Court affirmed the judgment without opinion (409 U.S. 904), apparently in reliance upon a memorandum submitted by the Solicitor General of the United States (Jt. App. pp. 56a-60a) which concluded that the case was not ripe for plenary review because the Secretary of HEW was about to amend the relevant regulations (Jt. App. p. 60a). The Court did not there consider the legislative history issue presented by the Chamber in the instant petition, and, as set forth below, the Chamber's appeal of this decision to the Court was denied not on the merits but "for lack of jurisdiction".

C. The Chamber Attempts To Intervene

On August 30, 1971, the Chamber sought leave to intervene before the three-judge court. The district court denied the Chamber's motion to intervene as a party but allowed it to participate *amicus curiae* (Jt. App. p. 4a). The Chamber filed a separate appeal (No. 71-1554) to the Court, limited to the intervention question, which was denied "for lack of jurisdiction." 409 U.S. 907 (1972). Thereafter, the Chamber appealed this issue to the Fourth Circuit which, on June 30, 1973, ruled it had subject matter jurisdiction because "the instant appeal is from a denial of a petition for intervention and not of an injunction." (Jt. App. p. 109a). The Court of Appeals concluded only that the district court did not abuse its discretion by denying the Chamber permissive intervention (Jt. App. p. 113a).[3]

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[3] The Fourth Circuit noted (Jt. App. p. 112a):

. . . "the district court's ruling on the Chamber's *amicus* argument was, at most, mere *dicta* and not binding on anyone. The district court did not rule on the merits of the Chamber's contention; its only *holding* was that the Chamber would not be permitted to intervene. (emphasis in original).

D. The Instant Proceedings

On July 12, 1972, the Secretary of HEW amended 45 C.F.R. 233.100(a)(1) ostensibly to permit each State to determine whether to provide AFDC-UF benefits to the children of fathers voluntarily idled from their employment because of their election to support their collective bargaining representative in a labor dispute. The Secretary specifically stated that he was neither speaking on behalf of Congress nor responding to a specific congressional mandate (Jt. App. pp. 124a-125a).

After publication of the amended HEW regulations on October 23, 1973, the Chamber timely filed a motion to intervene as a party. The District Court granted this motion on January 31, 1974 (Jt. App. pp. 106a-107a). The Chamber and the State of Maryland then moved to dissolve the injunction previously entered by the District Court (Jt. App. pp. 114a-116a). The Chamber urged, *inter alia* that the mandatory injunction was contrary to federal labor policy (Jt. App. pp. 119a-120a).

On June 25, 1974, the District Court issued its opinion, denying the motions to dissolve the outstanding injunction (Jt. App. pp. 79a-85a). The court acknowledged that its earlier opinion "literally read" encompassed the amended regulation issued by the Secretary on July 12, 1973 (Jt. App. p. 84a). The court now concluded with benefit of "hindsight" that the 1968 amendment to Section 607 of the Social Security Act, required the Secretary to promulgate standards rather than a national definition of unemployment. Because "(the July 12, 1973) amendment established no standards for the States to follow and simply permitted each State to do as it chose" (Jt. App. p. 84a), the court considered this amendment to be contrary to the Secretary's authority, and thus Maryland's regu-

lation denying benefits to strikers remained invalid (Jt. App. p. 85a).

The Chamber filed concurrent appeals to this Court and to the Fourth Circuit. On January 27, 1975, the Supreme Court denied the Chamber's appeal "for lack of jurisdiction" under 28 U.S.C. Sec. 1253. 420 U.S. 903.

THE DECISION OF THE COURT OF APPEALS

The Court of Appeals, in a per curiam opinion, upheld the District Court and adopted its opinion (Jt. App. p. 103a). With respect to the Chamber's contention, the court stated (Jt. App. p. 103a): "We do not view the national labor policy and the national social policy as irreconcilable, but if they are so viewed, there is presented a policy question for the Congress that is not for us to decide." The Court of Appeals acknowledged that the Secretary of HEW "has now determined that it should issue national standards", and noted "the Secretary's intention has not yet been implemented and that proposed regulations [Jt. App. pp. 121a-124a] have not yet been adopted" (Jt. App. p. 103a).

REASONS FOR GRANTING THE WRIT

A. Introduction

The decisions below which unqualifiedly enroll striking employees in the federal AFDC-UF program creates a signal tension between national welfare and labor policy never intended by Congress. In addition, these decisions are contrary to rulings of the Court interpreting the Social Security Act and the National Labor Relations Act. Accordingly, review is now essential "so that the obvious purpose in the enactment of each (of these statutes) is preserved." *Bhd. of R.R. Trainmen* v. *Chicago River and Ind. R.R.*, 353 U.S. 30, 40 (1957).

B. Congress Has Precluded Striking Employees from Receiving AFDC-UF Benefits During a Strike

The initial Aid for Dependent Children program (AFDC) limited eligibility only to needy children. 49 Stat. 629 (1935). See *Steward Mach. Co.* v. *Davis,* 301 U.S. 548, 586 (1937), *Burns* v. *Alcala,* 420 U.S. 575, 581 (1975); *Philbrook* v. *Clodgett,* 421 U.S. 707, 709 (1975). Fifteen years later Congress authorized the payment of benefits to the adult relative of the dependent child, if the child met the State's need definition and had been deprived of the support of a parent by virtue of death, disability or absence from the home. 64 Stat. 551 (1950). Since eligibility could be obtained on no other basis, Congress rejected, in enacting the original program or the 1950 amendments, any notion that strikes arising out of collective bargaining created the type of hardships for dependents of workers in private industry which should be ameliorated by federal money. Congress knew how to provide striking employees with federal monies. Only two years before in 1933, Congress enacted legislation expressly providing striking workers with benefits under specified conditions pursuant to the Railroad Employment Insurance Act. 45 U.S.C. §§ 351, 354(a-2)(iii) (Jt. App. p. 129a). The absence of a similar express eligibility in the Social Security Act as amended in 1950 conclusively demonstrates that Congress did not originally fashion this legislation either by accident or design to provision dependents of employees on strike.

In 1961 Congress for the first time created benefit eligibility for an unemployed father of a dependent child (AFDC-UF). This amendment was not designed to provision children of striking fathers. Rather,

Congress desired to relieve need specifically occasioned by widespread long-term unemployment caused, not by economic strikes, but by the 1959-1960 economic recession. Congress also desired to eliminate any financial incentive for the father to abandon the home to render the child eligible for benefits. See Hearings on H.R. 3854 and H.R. 3865 before the House Committee on Ways and Means, 87 Cong. 1st Sess. pp. 94-95 (1961). This amendment then arose from the perception of a particular need and was fashioned as a means of transmitting the long-term unemployed into economically self-sufficient citizens. Hearings on H.R. 12080 before the Senate Committee on Finance, 90th Cong. 1st Sess. p. 264, 269. Indeed, the scope of the AFDC-UF program was expressly limited to fathers who lost jobs by operation of recessionary business cycles, and who needed financial assistance to maintain a family while actively seeking to re-enter the work force. 107 Cong. Rec. 3767-3768 (remarks of Congressman Byrnes); Report of Senate Committee of Finance of AFDC Benefits to Children of Unemployed Parents, 87th Cong. 1st Sess. (1961, Report No. 185), p. 3. Eligibility for fathers like Mr. Francis, whose financial need arises solely out of support for a strike, is wholly inconsistent with this legislative purpose. There is nothing ambiguous about the absence of reference to striker eligibility in 42 U.S.C. § 601 *et seq.*[4]

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[4] In one colloquy during debate Congressman Mills stated that "it is possible" that states could use "their own funds" obtained from "general taxpayers funds" to support persons unemployed as a result of a labor dispute. 107 Cong. Rec. 3766. This statement indicates only that Congressman Mills did not believe Congress could tell the States how to disburse their own funds and does not constitute a view that federal monies disbursed under the AFDC program could also be given to striking employees.

Seven years later Congress re-enforced and re-emphasized its commitment to a benefit program designed to insure productive citizens. The Federal Work Incentive Program (WIN), requiring benefit applicants to seek work or be amenable to job training in order to establish and maintain eligibility, was incorporated into the AFDC-UF statute. 81 Stat. 877, 42 U.S.C. § 606(b)(2) (1968).[5]

These amendments were designed not to expand existing eligibility, but to reduce the number of recipients by providing an economic incentive to improve employability. Since strikers, by virtue of their pre-strike employment are employable and self-sufficient workers who possess valuable job skills, there is no basis for inferring that Congress intended to authorize or approve striker eligibility in amendments distinctly designed to reduce the number of claimants and to convert recipients into better qualified workers. Indeed, Congress enacted a federal definition of unemployment which expressly limited eligibility for fathers of dependent children "who have had a recent attachment to the work force". H.R. Rep. No. 544, 90th Cong. 1st Sess. p. 108 (1967). See also S. Rep. No. 744, 90th Cong. 1st Sess. p. 160 (1967). Since striking workers

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[5] Congress further provided that the failure of an employable individual to conform to the work requirement would terminate benefits if an offer of employment or enrollment in a training program was rejected "without good cause". 42 U.S.C. §§ 602 (a)(19)(F), 607 (b)(1)(B), 607 (b)(2)(C)(i). See also *Philbrook* v. *Clodgett*, *supra*, 421 U.S. at 710-11.

Consistent with these amendments, the Secretary of HEW limited a bona fide refusal to accept employment to substandard wages, physical inability to perform the job and unsafe working conditions. Appendix B, Regulation Section 233.100 Title 45, C.F.R. Ch. II, Sec. 233.100. The Secretary apparently found no basis in the absence of supportive legislative intent to include striking as another valid reason to refuse available employment.

are defined under the National Labor Relations Act (Jt. App. . 132a) as retaining a full and continuing employment relationship with their employer during any type of strike (see *infra*, pp. 15-16), this amendment to the Social Security Act constitutes literal exclusion of striker eligibility under the AFDC-UF program.[6]

The restricted purpose of the AFDC-UF program, also reflected in 42 U.S.C. § 601, imposes definitional limitations upon the fathers who are within the class of intended recipients.[7] As the Court stated in *Burns* v.

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[6] Congress also withdrew from participating states discretion to define "unemployment" "because of the wide variation in the definitions used by the States. In some instances, the definitions have been very narrow so that only a few people have been helped. In other states, the definitions have gone beyond anything that the Congress originally envisioned". H.R. Rep. No. 544, 90th Cong., 1st Sess. p. 108 (1967). This delegated discretion is limited by the purposes of the AFDC- UF statute, i.e., "to tie the program more closely to the work and training program authorized by the bill, and to protect only the children of unemployed fathers who have had a recent attachment to the work force". *Id.* p. 107-108. Since Congress did not intend to enroll striking employees as beneficiaries, the Secretary of HEW can not define unemployment to permit states to provision strikers, as is the case with the pending proposed regulations (Jt. App. pp. 121a-124a), because the Secretary's authority to formulate regulations must not be "inconsistent with this chapter". 42 U.S.C. § 1302 (Jt. App. p. 128a). Thus, while the Chamber and Maryland agree the mandatory injunction should be dissolved, the Chamber insists strikers are ineligible for AFDC-UF benefits by express federal welfare and labor policy and the exclusion is not optional. Since congressional intent is paramount to agency issued regulations, it is necessary, as the courts below recognized, to first consider the Chamber's contentions before those of Maryland.

[7] 42 U.S.C. § 601 entitled "Authorization of Appropriation" (Jt. App. p. 126a) provides:

> "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabili-

Alcala, supra, 420 U.S. at 582-83 n.9: "Congress has not undertaken to provide support for all needy children . . ." The courts below erred in expanding the scope of the AFDC-UF program to include children of striking employees whose need arises solely out of the fathers' participation in a labor dispute.

This analysis is further supported by the fact that when Congress has intended to provide federal benefits to strikers it has done so in positive terms as in the Railroad Employment Insurance Act (45 U.S.C. § 351, 354 (a-2), and the Food Stamps Act (7 U.S.C. §§ 2011-26).

The legislative history of the Food Stamps Act is particularly instructive. As originally enacted in 1964, this Act was not generally understood by Congress to provide eligibility for strikers. See 116 Cong. Rec. 42,015 (1970) (remarks of Cong. Abbitt).[8] However, in the absence of express language disqualifying strikers, an increasingly large number of striking employees were able to obtain benefits.[9] In 1970 Congress rejected efforts in the House and Senate to disqualify strikers

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tation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and *to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection,* there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purpose of this part". (Emphasis supplied)

[8] "As a member of the (agricultural) committee in 1964, when this program started, I for one had no idea that food stamps were to be used to subsidize strikers".

[9] See generally Carney, "The Forgotten Man on the Welfare Roll: A Study of Public Subsidies for Strikers", Vol. 1973 Wash. U.L.Q. 469, 513-14.

from receiving benefits, and, significantly, amended the statute to specifically provide that (Jt. App. p. 133a) "refusal to work at a plant or site subject to a strike or lockout for the duration of such strike or lockout not be deemed refusal to accept employment". 7 U.S.C. § 2014(c). This provision, although inartfully drafted, was expressly designed to approve striker eligibility because, as the relevant section of the Agricultural Committee's report states:

> The secretary is free to establish whatever requirements he deems appropriate as to the method and time for strikers to register for employment or training at facilities not subject to a strike. H.R. Rept. No. 91-1402, 91st Cong. 2d. Sess. 10-11 (1970).

Thus Congress has not ignored the basic nourishment requirement of dependents whose fathers are on strike. But Congress did not provide for this need through direct financial support in the AFDC-UF program. Compare *Florida Power & Light v. Electrical Workers,* 417 U.S. 790, 807-8 (1974). Its silence in this respect, coupled with the explicit eligibility provided under the Food Stamps Act, is a persuasive indication that Congress did not desire to provide AFDC-UF funds for strikers. To paraphrase the Court in *Burns* v. *Alcala, supra,* if Congress had intended similar eligibility in the AFDC-UF program it would very likely have done so explicitly.[10]

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[10] In light of this legislative history, the defeat of several legislative efforts since 1968 to specifically exclude strikers' coverage under the AFDC-UF program is not determinative evidence that Congress intended to authorize such eligibility. H.R. 6004, 92nd Cong. 1st Sess. 197 (1971) (not reported out of committee); amendment to H.R. 1, 92nd Cong. 1st Sess., § 448, 1971 (defeated); see 118 Cong. Rec. 17052 (1972). (See also S. Rept. No. 92-1230,

C. The Decision Below Is Contrary to Rulings of the Court

In *Burns v. Alcala, supra,* the Court narrowly construed the Social Security Act to preclude federal benefits eligibility unless Congress has affirmatively legislated inclusion or intended coverage to be optional. 420 U.S. at 580-84. There, certain pregnant mothers sought AFDC benefits for unborn children who would be eligible upon birth. In the absence of any indication that Congress intended to provide federal assistance to dependent children before birth, the Court concluded that unborn children were not within the class of beneficiaries intended by Congress. With respect to dependent children of striking employees, there is not only no affirmative congressional indication of their eligibility, but as we have demonstrated above, such eligibility is fundamentally precluded by the federal definition of unemployment in Section 606 and by the basic purposes of the AFDC-UF program.

This conclusion is further reinforced by analogy to the recent ruling in *Carleson* v. *Remillard,* 406 U.S. 598 (1972). There, the Court's holding that children of fathers away from the home on military service were eligible for federal AFDC benefits was based in significant part on the rationale that, unlike union represented employees like Mr. Francis, personnel on active military service are without access to a union or to collective bargaining to assist the advancement of their economic circumstances. 406 U.S. at 603.

92nd Cong. 2nd Sess. 108, 472-73 (1972) amendment deleted before bill voted on the Senate floor). 118 Cong. Rec. 16815. Rather, it is at least as plausible to infer that these amendments originated out of congressional awareness of erroneous interpretations of the purposes of this program, and therefore simply constitute an effort to clarify the original congressional intent. "It would be equally plausible to suppose that (the drafters) thought HEW had misinterpreted the Act and wanted to make the original intent clear". *Burns* v. *Alcala, supra,* 420 U.S. at 586 n.12.

The decision below stands this reasoning on its head, and substitutes without supporting Congressional legislation unqualified direct federal financial subsidies for striking employees while they concurrently advance their economic interests at the collective bargaining table.

D. The Decision Below Is Contrary to National Labor Policy

As we have shown, *supra*, pp. 7-12, the Social Security Act provides no implication whatever as originally enacted in 1935 or as amended that Congress was concerned about the effects strikes had on strikers' dependents. The economic adversity, if any, suffered as a result of a strike was not the type of misfortune which Congress intended to mitigate by direct federal financial assistance. Congress intended the AFDC-UF program to protect children and the nuclear family from employment disruption caused by the impersonal operation of recessionary business cycles.

In stark contrast, the concurrently enacted congressional solution for advancing the economic well-being of the family of the employed worker was to grant the breadwinner, in the Wagner Act of 1935, the freedom to strike and to engage in other federally protected rights to force his employer to accede to his demands for increased wages and monetary benefits and thereby improve his standard of living through self-help. 29 U.S.C. § 163.[11] It was Congress' judgment in 1935 that redressing the balance of bargaining power between employer and employee by protecting the worker's right to strike and bargain collectively would reduce

[11] 29 U.S.C. § 163 provides:

> Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

industrial strife, ameliorate business depressions, and improve wages. 29 U.S.C. § 141.[12] This is so because:

> Freedom to strike, to picket, and to engage in other concerted activities affects the progress of union organization and the balance of power in collective bargaining. The progress of organizations and the balance of power affect the way collective bargaining works. Cox, "Federalism in Labor Law", 67 Harv. L. Rev. 1297, 1317 (1954).

Congress further protected the job rights of striking employees in the Wagner Act by defining an employee to "include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment. . . . 29 U.S.C. § 152(3). As the Court has observed: "[t]he status of the striker as an employee continues until he has obtained 'other regular and substantially equivalent employment' ". *NLRB* v. *Fleetwood Trailer Co.*, 389 U.S. 375, 381 (1967). Thus, Mr. Francis' effort to find other work during the 1971 strike does not render him "unemployed" within the meaning of the NLRA, nor would it give American Smelting Co. a legitimate basis for rejecting his offer to return to work. It is equally well established that the act of striking does not itself render the striker unemployed. A "strike" is "a combined effort on the part of a body of workmen *employed* by

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[12] Section 1 of the NLRA, entitled "Findings and Policies" provides in pertinent part: "The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantively burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries" (Jt. App. pp. 130a-132a).

the same master to enforce a demand for higher wages, shorter hours, or some other concession, by stopping work in a body at a prearranged time, and refusing to resume work until the demanded concession shall have been granted". *C.G. Conn. Ltd.* v. *NLRB*, 108 F.2d 390, 396 (7th Cir. 1939). (emphasis supplied); see also *Columbia Pictures Corp.*, 82 NLRB 568, 577 (1949).

These definitional protections for the job security of striking employees, who elect to utilize "the ultimate weapon in labor's arsenal for achieving agreement upon its terms",[13] enables workers to use economic pressure to force employer concessions which advance their monetary compensation without concurrent job forfeiture. See also *NLRB* v. *Laidlaw Corp.*, 414 F.2d 99 (7th Cir. 1969), *cert. denied*, 397 U.S. 290 (1970); "Reinstatement: Expanded Rights for Economic Strikers" 58 Calif. L. Rev. 511 (1970). The NLRA, however, "does not contemplate that unions will always be secure and able to achieve agreement". *Porter* v. *NLRB*, 397 U.S. 99, 109 (1970). Strikes often result in hardships for participants. "The likely duration of the strike may increase the specter of hardship to his family; the ease with which the employer replaces the strikers may make the strike seem less provident". *NLRB* v. *Granite State Joint Bd.*, 409 U.S. 213, 217 (1972). These consequences are not to be mitigated by either federal or state interference because national labor policy "leaves the adjustment of industrial relations to the free play of economic forces but seeks to assure that the play of those forces be truly free". *Phelps Dodge Corp.*, v. *NLRB*, 313 U.S. 177, 183 (1941): *Accord*: *NLRB* v. *Burns*, 406 U.S. 272, 288 (1971); *Motor Coach Employees* v. *Missouri*, 374 U.S. 74, 82 (1963); *Teamsters Union* v. *Oliver*, 358 U.S. 283, 295 (1959).

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[13] *NLRB* v. *Allis-Chalmers*, 388 U.S. 175, 181 (1967).

The decision below, which permits striking employees to receive federal monies during the strike term, is contrary to this statutory scheme. Congress invited employees to advance their own and concurrently their families' economic sufficiency, not as the court below held, by requesting federal money, but by the exercise of rights protected under the NLRA. See also *Macias* v. *Finch,* 324 F. Supp. 1252, 1257 n.3 (N.D. Cal.), *aff'd,* 400 U.S. 913 (1970) (fair labor standard legislation not welfare laws established wage floor).

The Court recognized in *Super Tire Engin. Co.* v. *McCorkle,* 416 U.S. 115, 124 (1974):

> It cannot be doubted that the availability of state welfare assistance for striking workers in New Jersey pervades every work stoppage, affects every existing collective bargaining agreement, and is a factor lurking in the background of every incipient labor contract.

There the State of New Jersey paid certain striking employees financial benefits during a strike under a state general assistance law and under the federal AFDC program. The Court observed that state created eligibility did have an adverse impact upon collective bargaining and alters the balance of power struck by Congress in the NLRA, and then stated (416 U.S. 124):

> The question, of course, is whether Congress, explicitly or implicitly, has ruled out such assistance in its calculus of laws regulating labor-management disputes.

Thus, the Court held that as a matter of law the permissibility of public assistance for strikers is to be resolved by reference to labor statutes and expressions of Congressional intent. The Court of Appeals properly considered this question as one of statutory interpretation of federal welfare and labor policy but erred in

concluding that Congress has not resolved this question in favor of ineligibility for federal welfare benefits. Accordingly, review of this important and recurring question [41], which the Court has not previously considered, is now timely.

CONCLUSION

The petition for a writ of certiorari should be granted.

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[14] *Eg., I.T.T. Corp* v. *Minter*, 435 F.2d 909 (1st Cir.), *cert. denied*, 402 U.S. 933, *rehearing denied*, 404 U.S. 874 (1971); *National Gypsum Co.* v. *Administrator, La. Dept. of Employment Security*, 313 So.2d 527 (La. Sp.Ct. 1975), *appeal dismissed* 44 U.S.L.W. 3340 (December 9, 1915) (No. 75-299); *Kansas City Star Co.* v. *Dept. of Industry, Labor and Human Relations*, 211 N.W.2d 488 (Wis. Sup.Ct. 1973), *rehearing denied*, 217 N.W.2d 666 (1974), *cert. denied*, 419 U.S. 870 (1974); see also *Grinnell Corp.* v *Hackett*, 475 F.2d 449 (1st Cir. 1973); *Hawaiian Telephone Co., et al*, v. *Hawaii*, — F. Supp. — (D. Hawaii 1975), 90 LRRM 2854; *Shell Oil Co.* v. *Brooks*, — F. Supp. — (No. C74-1935 (W.D. Wash.); *Johns-Manville Prods.* v. *Doyal*, 510 F.2d 1196 (5th Cir. 1975).